Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-1538

ROCCO MASTRANGELO and JOSEPH ADDOLORIA,

Petitioners,

-against-

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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OCTOBER TERM, 1975

NO.

ROCCO MASTRANGELO and
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-against-

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE
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FOR THE SECOND CIRCUIT

To the Honorable, The Chief Justice, and Associate Justices of the Supreme Court of the United States:

Petitioners, Rocco Mastrangelo and Joseph Addoloria respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit rendered on February 25, 1976 which affirmed the petitioners conviction for the crimes of hijacking, conspiracy to hijack and possession of a firearm in the course of a hijacking.

OPINIONS BELOW

The petitioners judgment of conviction was filed on November 24, 1975. The judgment was affirmed by the Court of Appeals for the Second Circuit in a determination filed on February 25, 1976. Said opinions have not yet been officially reported but are made a part hereof and are set forth in the Appendix.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on February 25, 1976. The jurisdiction of this court is invoked pursuant to 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Were the petitioners denied due process of law and a fair trial by a lengthy three year pre-indictment delay?

2. Were the petitioners denied a fair trial by the action of the trial court in its attitude towards defense counsel and in its rulings which allowed the prosecutor to introduce in detail evidence of the petitioners alleged

participation in uncharged prior and subsequent crimes?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions involved in the case at bar are the Fifth and Sixth Amendments to the United States Constitution.

STATEMENT OF THE CASE

The petitioners, Rocco Mastrangelo and Joseph Addoloria, after having been indicted on April 8, 1975 were convicted on November 21, 1975 after a trial by jury of the federal crimes of hijacking, conspiracy to hijack and possession of a firearm during the commission of a hijacking (18 U.S.C., Sections 659, 371, 924) and were sentenced to terms of up to seven years and nine years respectively. The two men were alleged to have been part of a ring which hijacked a truck belonging to the Arlene Knitwear Company on May 3, 1972 while the said vehicle was in the process of interstate commerce with a load of knitted garments valued at approximately $25,000. The prosecution's main witness at the time

was one Paul Fleischer, a named co-conspirator involved in criminal activities for some sixteen years. Fleischer testified at the trial that the petitioners were part of a hijacking ring and in addition was allowed to testify as to the petitioners involvement in other prior and subsequent uncharged crimes.

REASONS FOR GRANTING THE WRIT

THE LONG DELAY IN PROCEEDING TO AN INDICTMENT PREJUDICED THE PETITIONERS SO AS TO DENY THEM DUE PROCESS OF LAW AND A FAIR TRIAL.

In the case at bar this court is presented with the unique opportunity of clarifying court rulings as to the applicability of the Fifth and Sixth Amendments to instances of pre-indictment delay. In the case at bar the indictment was filed on April 8, 1975 alleging the commission of crimes in March of 1972, more than three years earlier. In addition it became clear at trial from the testimony of Paul Fleischer and others that Fleischer, the government's main witness, had been cooperating with the

government since June of 1972 (T 261, 262, 270, 933)* and had given statements to the government regarding his allegations against the petitioners as far back as June of 1972.**

Since the prosecution's case at trial was in essence based solely on Fleischer's testimony there is no legitimate reason why the government should have waited three years to initiate a prosecution.

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* T - Refers to Minutes of Trial.

**The lack of a pre-trial motion regarding the issue of undue delay is based upon the fact that it became known only at trial that the government way back in 1972 was in possession of facts upon which to proceed with an indictment. Once this was revealed defense counsel promptly and vigorously raised the issue (T 1196, 1197; Minutes of Mastrangelo's Sentence, pg.3-4).

In United States v. Marion, 404 U.S. 307, this court indicated the possible applicability of the fifth and sixth amendment rights to due process of law and a fair trial where a defendant could demonstrate actual prejudice arising by the government's delay, and a purposeful design by the prosecution to gain a tactical advantage. This the Court held could occur irrespective of the Statute of Limitations. See also United States v. Napue, 401 F.2d 107 (7th Cir., 1968) cert denied 393 U.S. 1024.

Under the circumstances of this case the only inference that can be drawn is that the government deliberately delayed so as to obtain a tactical advantage in violation of explicit judicial pronouncements. See United States v. Marion, 404 U.S. 307. The prejudice to the petitioners was also severe. It must be recalled that because of the lapse of time the petitioners were unable to reconstruct the critical day in question so as to recall where they were and what they were doing on the day of the alleged hijacking. Mastrangelo in particular frankly testified that he could not remember where he was on that day (T1021, 1100). The Second Circuit in United States v. Feinberg, 383 F.2d 60 (2nd Cir., 1967) at page 65 stated:

"Though prejudice is not to be presumed it may well be that pre-arrest delay may impair the capacity of the accused to prepare his defense and if so such impairment may raise a due process claim under the fifth amendment (Powell v. U.S., 352 F.2d 705, 707) or a sixth amendment claim based upon the speedy trial guarantee, U.S. v. Simmon, 338 F.2d 806; U.S. v. Dickerson, 347 F.2d 784; Chapman v. U.S., 376 F.2d 705.

For this reason we must inquire whether there is a plausible claim of prejudice from the delay in arrest. See Jackson v. U.S., 351 F.2d 821, 823 (1965); such a claim may arise if a key defense witness or valuable evidence is lost. See Petition of Provoo, 17 FRD 183, 203 (D.Md) aff'd. 350 U.S. 856, if the defendant is unable credibly to reconstruct the events of the day of the offense, see Jackson v. U.S., 351 F.2d 823, if the present recollection of the government or defense witness is impaired,

Ross v. U.S., 349 F.2d 210 (D.C. Cal. 1965), because if any of the events occur the reliability of the proceeding for the purposes of determining guilt becomes suspect".

See also United States v. Giacalone, 477 F.2d 1277 (6th Cir., 1973).

In determining violations of the Fifth Amendment due process requirement with respect to long delays in commencing prosecutions, it appears from recent Supreme Court pronouncements that the "balancing test is applicable in which both the conduct of the prosecutor and the defendant are weighed." Barker v. Wingo, 407 U.S. 514, 530 (1972).

The exact parameters of the Fifth and Sixth Amendments applicability to pre-indictment delay, however, have not yet been clearly spelled out and there appears at the present time to be a sharp division and difference of opinion among federal jurisdiction. Thus, at approximately the same time that the Second Circuit was affirming in the case at bar, the Fourth Circuit in United States v. Jeffrey McDonald, _F2d__ (4th Cir. No. 75-1870, Jan. 1976) and the Eighth Circuit in United States v. Barkett, _F2d__ 18 CrL 2429 (8th Cir. Jan. 28,1976) took

positions in line with petitioners argument. Thus the issue presented is of substantial importance and immediate impact which requires this court's review and attention.

THE COURT BELOW COMMITTED REVERSIBLE ERROR BY ALLOWING TESTIMONY OF THE APPELLANTS' PARTICIPATION IN UNCHARGED PRIOR AND SUBSEQUENT HIJACKINGS AND IN ALLOWING COLLATERAL IMMATERIAL EVIDENCE TO SUPPORT THESE ASSERTIONS.

Prior to trial the government indicated its intention to offer as part of their direct case proof of the appellants involvement in prior and subsequent hijackings not charged in the indictment. The government contended that this evidence would be offered to show a pattern of conduct and similar acts of the petitioners. After receiving memorandum of law on behalf of both sides the trial court determined that the evidence in question was proper and admissible as showing a "common scheme or plan or design" (T 196). Thus at the very beginning of Fleischer's testimony the government brought forth the issue of the petitioners' involvement in the possession of stolen goods from the

Lerner Shop theft during the second week of January 1972 and the incident involving the Royal Merchandise Co. in February of 1972 (T 104, 106, 109). Later on the government elicited from Fleischer's testimony regarding the subsequent hijacking of Liz Cartage Co. and Splendid Form Brassiere Co. in May of 1972, some two months after the date of the instant indictment involving Arlene Knitwear. The government then even went to the extent of producing five witnesses who had absolutely nothing to do with the Arlene case but who merely testified as to aspects of these other hijackings as a means of bolstering Fleischer's testimony. Thus Howard Lowett of Splendid Form testified that a truck belonging to his company was stolen on May 5, 1972 (T 879-883), FBI Agent Klotz testified that the Splendid Truck was found five and one-half miles from Forbes Place in New Jersey (T 889-891), Agent Gilkerson stated he found items relating to the Liz Cartage theft at the C & P Warehouse (T 903-906). Andrew Coniglio stated that he did a garbage hauling job for Fleischer at C & P Warehouse and John Connell the owner of the C & P premises testified he rented the warehouse to Charles Peters on March 8, 1972. (T 859-865, 940). The prior and subsequent hijacking alluded to by Fleischer could in no way be considered to be part

and parcel of an overall intertwined scheme or design and the admission of the testimony was highly prejudicial to the petitioners and constitute reversible error. The incidents involving Lerner Shops for example were not in the nature of a hijacking but the retention of stolen goods. In addition that incident and the one involving Royal Merchandise Co. were concluded even prior to the time of a discussion and decision on the Arlene matter.* The Liz Cartage and the Splendid Form matters occurred some time two months after, at a time when the original group of conspirators had been changed in membership** and operation. It is significant to note that the C & P Warehouse at 1471 Hempstead Turnpike of which substantial testimony was allowed, was leased to Peters on March 8, 1972,

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* Although the indictment charged a conspiracy with regard to the Arlene Truck beginning on January 1, 1972, Fleischer stated that Arlene was first discussed in the third week of February 1972. (T113).

** Cesare had allegedly joined the group (T 187-189).

five days after the alleged Arlene hijacking. It is thus clear that the introduction of all of the foregoing evidence by the government did not show a common plan or scheme but was designed to prejudice the petitioners in the eyes of the jury by proving bad character and by bolstering Fleischer's testimony on collateral immaterial matters. The prosecution clearly sought to have the jury draw an inference that the petitioners were scoundrels and that Fleischer was credible on the main issues in contention by bolstering his testimony on collateral matters by extrinsic evidence.

Thus the prosecution in summation specifically referred to Fleischer's testimony regarding the other crimes and the collateral evidence to support it as "corroborating Fleischer's main testimony" (T 1272-1274).

The recently enacted rule 404(b) of the Federal Rules of Evidence provides that:

> "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It <u>may</u> however be admissible for

> other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistaken or accident."

The rule in effect codified the long standing case law in the area and continues the practice of weighing on a case by case basis the probative value of the offered evidence against its prejudice. (Weinstein on Evidence, Vol. 2, pg. 404-24, 404-66). Thus in United States v. DeCicco, 435 F.2d 478 (2nd Cir. 1970) the Court reversed a conviction for conspiracy to transport stolen goods and stated at page 484:

> "The chief government witness' testimony if believed leads ineluctably to the conclusion that the defendants knew what they were doing. . . .Therefore whatever probative value the prior crimes. . .added to the prosecution's case on the issue of defendants intent to commit the conspiracy here claimed was far outweighed by the unwarranted inference the jury was permitted to draw that the defendants. . .were a continuing band of art treasure thieves and fences."

(See also United States v. Magee, 261 F.2d 607 (7th Cir. 1958); United States v. Byrd, 352 F.2d 570 (2d Cir. 1965); United States v. Phillips, 401 F.2d 301 (7th Cir. 1968); United States v. Fierson, 419 F.2d 1020 (7th Cir. 1969); Weinstein on Evidence, § 404(10), pg. 404-66, 67, 68.)

The probative value of the evidence in question was nil. The prosecution's case on the charges alleged in the indictment stood on its own if the testimony of direct involvement of the petitioners as related by Fleischer was believed by the jury. Thus no legitimate purpose was served by the introduction of the evidence in question. While the probative value was nil the prejudice to the petitioners was great. Having the jury hear testimony as to a series of other hijackings and then listening to witnesses corroborate details of these other hijackings certainly denied the petitioners a fair trial and a determination based solely on their guilt or innocence of the crimes charged. Throughout the admission of the foregoing prejudicial evidence defense counsel repeatedly objected and on numerous occasions requested a mistrial (T 878, 891,923,956).

In the case at bar there also developed from the beginning of the case until its conclusion friction between and a degree of hostility by the trial judge toward Mr. Mastropieri, the attorney for the petitioner Mastrangelo. Thus during the course of the proceedings the court below imposed a fine on defense counsel of $100. (T1382) and on numerous instances criticized him personally for his handling of the case both in front of and out of the presence of the jury. Thus the record reveals that the court accused Mr. Mastropieri of misrepresenting facts during a period of cross-examination (T 440, 443) of engaging in "improper conduct that could be referred to the bar association" (T636, 637) and of confusing facts before the jury (T 682). The court at one point specifically told the jury:

> "Now this is the second time Mr. Mastropieri has done this and I caution you that the fact that Mr. Mastropieri asks such a question does not indicate that there is any basis for it and indeed there was apparently no such basis in this case.
>
> You have to be careful. The fact that he asks a question

> that incorporates a fact does not mean it is true unless confirmed by the witness. Twice now this has happened by Mr. Mastropieri where he had no business asking the question." (T 476)

These remarks served to belittle, humiliate, and intimidate defense counsel for Mastrangelo and had a spill over effect with regard to both petitioners. Thus because of these circumstances the petitioners were denied the fundamentals of a fair trial and a full review of the issues by this Court is warranted.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Respectfully submitted,

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APPENDIX A

THE INDICTMENT

Cr. No._____
(T. 18, U.S.C., §659, §371, §924(c) (1), (2) and §2)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

CHARLES PETERS,
GERARD COLLINS, a/k/a "Rebel",
PAUL FLAMMIO,
ROCCO MASTRANGELO, a/k/a "Rocky",
JOSEPH ADDOLORIA, a/k/a "Joe Baldy",
CHARLES FORBES and
GERALD BARRY,

Defendants.
- - - - - - - - - - - - - - - - - - - X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 3rd day of March 1972, within the Eastern District of New York, the defendants CHARLES PETERS, GERARD COLLINS, also known as "Rebel",

PAUL FLAMMIO, ROCCO MASTRANGELO, also known as "Rocky" and JOSEPH ADDOLORIA, also known as "Joe Baldy", with intent to convert to their own use, did wilfully and knowingly embezzle, steal and unlawfully take from a motortruck belonging to the Arline Knitwear Company, Brooklyn, New York, a quantity of women's knitted garments, having a value in excess of One Hundred Dollars ($100.00), which goods were moving as and constituting an interstate shipment of freight from New York to New Jersey. (Title 18, United States Code, Section 659 and 2)

COUNT TWO

On or about and between the 1st day of January 1972 and the 7th day of March 1972, both dates being approximate and inclusive, within the Eastern District of New York, the defendants CHARLES PETERS, GERARD COLLINS, also known as "Rebel", PAUL FLAMMIO, ROCCO MASTRANGELO, also known as "Rocky", JOSEPH ADDOLORIA, also known as "Joe Baldy", CHARLES FORBES and GERARD BARRY, along with Paul Fleischer, named herein as a co-conspirator but not as a co-defendant, and others known and unknown to the Grand Jury, did knowingly and wilfully conspire to commit offenses against the United States, in violation of Title 18, United States Code, Section 659, by conspiring to unlawfully take

from a motortruck belonging to the Arline Knitwear Company, Brooklyn, New York, a quantity of women knitted garments, having a value in excess of One Hundred Dollars ($100.00), which goods were moving as and constituting an interstate shipment of freight from New York to New Jersey, and further, to unlawfully receive and have in their possession the said garments, the aforesaid defendants knowing the same to have been stolen.

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, within the Eastern District of New York and elsewhere, the defendants CHARLES PETERS, GERARD COLLINS, also known as "Rebel", PAUL FLAMMIO, ROCCO MASTRANGELO, also known as "Rocky", JOSEPH ADDOLORIA, also known as "Joe Baldy", CHARLES FORBES and GERALD BARRY committed among others the following:

OVERT ACTS

1. In or about January 1972, within the Eastern District of New York, the defendants CHARLES PETERS, GERARD COLLINS, also known as "Rebel", PAUL FLAMMIO, ROCCO MASTRANGELO, also known as "Rocky" and JOSEPH ADDOLORIA, also known as "Joe Baldy", along with co-conspirator Paul Fleischer met in Queens, New York.

2. On or about March 3, 1972, the defendant CHARLES FORBES had a telephone conversation with the defendant ROCCO MASTRANGELO, also known as "Rocky", in New York, New York.

3. On or about March 3, 1972, the defendant GERALD BARRY drove a tow truck from New Jersey to New York, New York. (Title 18, United States Code, Section 371).

COUNT THREE

On or about the 3rd day of March 1972, within the Eastern District of New York, the defendants CHARLES PETERS, GERARD COLLINS, also known as "Rebel", PAUL FLAMMIO, ROCCO MASTRANGELO, also known as "Rocky" and JOSEPH ADDOLORIA, also known as "Joe Baldy", knowingly, intentionally, wilfully and unlawfully carried and used a firearm, during their commission of an offense for which they may be, and are being, prosecuted in a Court of the United States, to wit: the theft of a quantity of women's knitted garments, having a value in excess of One Hundred Dollars ($100.00), which goods were moving as and constituting an interstate shipment of freight, in violation of Title 18, United States Code, Section 659, which offense

is set forth in Count One above. (Title 18, United States Code, Sections 924(c)(1), (2) and Title 18, United States Code, Section 2)

A TRUE BILL.

_____
FOREMAN

_____
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

APPENDIX B

JUDGMENT OF CONVICTION
(Mastrangelo)

DOCKET NO.
75 CR 275

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

ROCCO MASTRANGELO, a/k/a Rocky,

Defendant.

JUDGMENT AND PROBATION/COMMITMENT ORDER
In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
11	21	1975

COUNSEL - WITH COUNSEL - E. MASTROPIERI, Esq.

PLEA - GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE, NOT GUILTY

There being a finding/verdict of xxx GUILTY, in Counts 1, 2 and 3.

FINDING & JUDGMENT - Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C. Sec. 659, 371, 924(c)(1), 2 in that on or about and between Jan. 1, 1972, and March 7, 1972, both dates being approximate and inclusive, and on or about March 3, 1972, the defendant knowingly and wilfully did conspire to commit offenses against the U.S., by conspiring to, and to wilfully and knowingly embezzle, steal, and unlawfully take from a motortruck a quantity of women's knitted garments, having a value in excess of $100.00, which goods were moving as an interstate shipment of freight from N.Y. to N.J. and the defendant wilfully and unlawfully carried and used a firearm during his commission of an offense, to wit: the theft of a quantity of women's knitted garments, having a value in excess of $100.00.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of

the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER - IT IS ADJUDGED on count 1 that the defendant is hereby committed to the custody of the Attorney General or his duly authorized or his authorized representative for a period of 7 years on count one pursuant to T-18, U.S. Code, Sec. 4208 (a) (2)

IT IS ADJUDGED on count 2 that the defendant is hereby committed to the custody of the Attorney General or his duly authorized representative for a period of 5 years pursuant to T-18, U.S. Code, Sec. 4208(a)(2) - defendant to serve sentence concurrently with count 1.

SPECIAL CONDITIONS OF PROBATION - IT IS ADJUDGED on count 3 that the defendant is hereby committed to the custody of the Attorney or his authorized representative for imprisonment for a period of 7 years. Execution of sentence is suspended and the defendant is placed on probation for a period of 5 years; sentence imposed in count 3 to run consecutively with sentences imposed in counts 1 and 2.

ADDITIONAL CONDITIONS OF PROBATION - In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

s/ Thomas C. Platt
U.S. District Judge

Date 11/24/75

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
NOV 21 1975

APPENDIX C

JUDGMENT OF CONVICTION
(ADDOLORIA)

DOCKET NO.
75 CR 275

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

JOSEPH ADDOLORIA a/k/a Joe Baldy

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
11	21	1975

COUNSEL - WITH COUNSEL - Harold Goerlich, Esq.

PLEA - GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE NOT GUILTY

There being a finding/verdict of xxx Guilty, in Counts 1, 2 and 3.

FINDING & JUDGMENT - Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C. Sec. 659, 371 924(c)(1), 2 in that on or about and between Jan 1, 1972, and March 7, 1972, both dates being approximate and inclusive, and on or about March 3, 1972, the defendant, knowingly and wilfully did conspire to commit offenses against the U.S., by conspiring to, and to wilfully and knowingly embezzle, steal, and unlawfully take from a motortruck, a quantity of women's knitted garments, having a value in excess of $100.00, which goods were moving as an interstate shipment of freight from N.Y. to N.J. and the defendant wilfully and unlawfully carried and used a firearm during his commission of an offense, to wit: the theft of a quantity of women's knitted garments, having a value in excess of $100.00.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of

the Attorney General or his authorized representative for imprisonment for a period of 9 years on count 1 pursuant to T-18, U.S.C. Sec. 4208(a)(2).

SENTENCE OR PROBATION ORDER - IT IS ADJUDGED on Count 2 that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of 5 years pursuant to T-18, U.S.C. Sec. 4208(a)(2); sentence in count 2 to run concurrently with sentence imposed in count 1.

SPECIAL CONDITIONS OF PROBATION - IT IS ADJUDGED on Count 3 that the defendant is hereby committed to the custody of the Attorney or his authorized representative for imprisonment for a term of 9 years. Execution of sentence is suspended and the defendant is placed on probation for a period of 5 years; sentence in count 3 to run consecutively with the sentences imposed in counts 1 and 2.

ADDITIONAL CONDITIONS OF PROBATION - In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation,

reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

s/ Thomas C. Platt
U.S. District Judge

Date 11/24/75

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
NOV 21 1975

APPENDIX D

ORDER OF THE UNITED STATES COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-fifth day of February one thousand nine hundred and seventy-six.

Present: HON. WALTER R. MANSFIELD
HON. WILLIAM H. TIMBERS
HON. THOMAS J. MESKILL

Circuit Judges,

75-1411
76-1019

United States of America,
Plaintiff-Appellee

v.

Charles Peters, Gerard Collins, a/k/a "Rebel", Paul Flammio, Rocco Mastrangelo, a/k/a "Rocky", Joseph Addoloria, a/k/a "Joe Baldy", Charles Forbes and Gerald Barry,
Defendants

Rocco Mastrangelo, a/k/a "Rocky", Joseph Addoloria, a/k/a "Joe Baldy",
Defendants-Appellants.

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgments of said District Court be and they hereby are affirmed.

A. DANIEL FUSARO
Clerk

By
Vincent A. Carlin
Chief Deputy Clerk